

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Indian Health Service
Rockville, Maryland 20857

Refer to: OHP

INDIAN HEALTH SERVICE CIRCULAR NO. 92-2

Patient Self-Determination and Advance Directives - Policy

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1. Purpose. This circular outlines Indian Health Service (IHS) policy regarding a patient's right to accept or refuse medical and surgical treatment. The circular specifically addresses the Federal Patient Self-Determination Amendments (PSDA) of 1990,

Background. Every competent person has a right to determine whether he/she will receive life-sustaining treatment or not. Whenever possible the patient or his/her agent should have the opportunity to consider ahead of time if life-sustaining treatment is desired. It is the responsibility of all health care providers to include their patients in the decision making process, and to adhere to Federal law governing patient self-determination.

The PSDA, passed as part of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, became effective December 1, 1991. The Amendments require that hospitals and other specified types of health care organizations participating in the Medicare/Medicaid programs inform patients of their right under existing State law to accept or refuse medical or surgical treatment and to formulate advance directives.

3. Definition. An advance directive is a written instruction, such as a living will or durable power of attorney for health care, which is recognized under State law either by statute or case law and relates to the provision of health care, when an individual is incapacitated.

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4. Policy

A. Application. This policy applies to all IHS hospitals and health centers. The requirements of the PSDA primarily involve inpatient facilities. However, it is the responsibility of all IHS health care facilities to participate in staff and community education efforts, and to refer patients who show an interest in executing an advance directive to community resources.

B. Statement of Policy.

1. General

- a) The IHS respects the patient's right of self-determination, and supports patient participation in health care decision making.
- b) All IHS hospitals must develop, maintain, and provide to all adult inpatients written information that explains the following:
 - (1) an individual's rights, under State law, statutory or case law, to make decisions about his or her medical care, including the right to accept or refuse medical or surgical treatment, and the right to formulate advance directives; and
 - (2) the written policies of the hospital respecting the implementation of such rights.
- c) The IHS hospitals must ensure that all adult patients are given the required information on admission or as soon as practicable after admission to the hospital.
- d) The State law(s) cited in the information will be those of the State within which the IHS hospital is located.
 - (1) If there is a tribal law that governs advance directives, it will have precedence over State law only for those tribal members living on that tribe's reservation.

- e) Tribal customs and traditional beliefs that relate to death and dying will be respected to the extent possible when providing information to patients on these issues. When appropriate, the information may -be provided verbally, or in the patient's .native language.
- f) The IHS hospitals must document in the medical record whether. or not the patient -has -executed an advance directive.
- g) The IHS facilities must not condition the provision of care upon or in any way discriminate against an individual, based upon whether or not the individual has executed an advance directive.
- h) The IRS service units must provide for the education of service unit staff and the -community served by the service unit on issues regarding advance directives.
- i.1 The IHS hospitals must 'honor advance directives as required by State/tribal law except where a provider, as a matter of conscience, cannot implement an advance directive and State/tribal law provides for conscientious objections.
- j) A patient may revoke an advance directive at any time.
- k) Legal consultation should be obtained when there is a question concerning the applicability of State or tribal laws governing advance directives.

2. The-Competent Patient

- a) All competent adults admitted to an IHS hospital will be provided with written and/or oral information on each admission that fulfills the requirements of Section 4.B.1.b above.
- b) All competent patients will be asked to declare whether or not they have executed an advance directive on each admission. The practitioner must then document the patient's response in the medical record.
- c) Patients who express a desire to execute or change an advance directive will be given information regarding local resources that can assist them in establishing or updating such a document.

3. The Incompetent Patient

- a) In the case of an incompetent patient, a spouse, parent, guardian or duly appointed agent 'when available, will be provided with' the information that fulfills the requirements of Section 4.B.1.b above.
- b) The information will be given in the same manner as defined for the competent patient..
- d) The individual responsible- for the patient will be asked to declare whether or not the patient 'executed an advance directive prior to his/her incompetency.
- d) If a patient is temporarily incapacitated on admission, the hospital will provide the appropriate information to the family on admission, and to the patient once he/she is no longer incapacitated.

4. Documentation

- a) The IHS hospitals must document in the medical record of all inpatients whether or not the individual has executed an advance directive.
- b) Once a patient has executed an advance directive, that advance directive should become a part of the medical record.
- c) If the care of a patient is being administered in accordance with an advance directive, it should be so noted by the attending physician in the progress notes of the patient's medical record.
- d) When an IHS patient is referred to another facility (IHS or non-IHS) for continued inpatient care, the referring physician should document in the transfer note whether or not the patient has executed an advanced directive. A copy of the advance directive, if available, will be included with the transfer note.

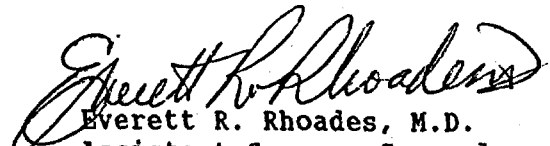
5. Withholding or Withdrawing Life-Sustaining Treatment When No Advance Directive is in Place

In the absence of an advance directive, or when the advance directive is not applicable to the clinical situation, withholding or withdrawing of life-sustaining treatment may be appropriate. When faced with such a clinical situation, the attending physician shall consider the desires of the patient, and when applicable, the spouse, family, guardian, and/or duly appointed agent. The attending physician should also consider:

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- a) Existing IRS policies. IHS Circular No. 91-4, Guidelines for Withholding Cardiopulmonary Resuscitation (CPR), specifically addresses IHS policy for withholding CPR for certain patients;
 - b) Existing State/tribal laws governing such acts;
 - c) The terminal nature of the patient's illness;
 - d) Obtaining written concurrence from a second staff physician;
 - e) Obtaining adequate informed consent; and
 - f) Documenting all discussions in the medical record.
6. Staff and Community Education
- a) The IHS hospitals must provide training to all appropriate staff concerning its policies and procedures on advance directives.
 - b) The IHS hospitals and health centers will -provide education materials for the community regarding advance directives. The materials should include at least the following:
 - (1) an individual's rights, under State/tribal law, to make decisions concerning the receipt of medical care ; and
 - (2) the right under State/tribal law to formulate advance directives.
 - c) Written materials may be developed directly by the IHS service unit, or existing written descriptions published by a State office, State medical society, or State hospital association may be used to help fulfill this requirement.
 - d) IHS hospitals and health centers will provide information on local resources that can assist patients who are interested in establishing an advance directive.


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